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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 38th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 December 1993, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Senegal concerning rights covered by articles 6 to 9 (continued) (E/1984/6/Add.22; E/C.12/1993/WP.15)

1. Mr. FOFANA (Senegal), replying to a question asked by Mr. Ceausu at the previous meeting about the discrepancy between the large numbers of supervisory personnel needed and the relatively small number actually recruited, said that a discrepancy did, in fact, exist and was yet another consequence of the structural adjustment to which he had already referred. Until 1988, all college students who succeeded in completing their studies had been guaranteed a post in the public service. Today, the intake from the grandes écoles was no more than 20 or 25 candidates a year. As he had explained, the national budget had had to be severely curtailed in many sectors, one of which was the employment of senior and middle-range supervisory personnel.

2. Mr. Marchan Romero had drawn attention to another discrepancy, that between the number of children who reached the statutory age for school attendance and the actual numbers entering school. There again, it was true that the schools could accept only 52 per cent of eligible children each year. It should be borne in mind, however, that Senegal's population was growing at a rate of 4.4 per cent and that the total number of public and private schools in a country with no less than 14,000 villages and 47 urban settlements was only 2,460 with a mere 11,560 classes. Attempts had been made to encourage the population to establish its own schools, but that initiative had been blocked by budgetary restraints on the training of teachers and the provision of school equipment.

3. Mr. Rattray had asked a question in connection with the very high educational drop-out rate of 45 per cent. One of the reasons was to be found in Senegal's educational system, which was closely modelled on the French system with its stringent selection procedures at each successive stage. Only a very small percentage of those who entered school could hope to go on to university. Those who fell by the way joined the army of employment seekers, causing serious concern to the authorities who realized that not all would find work and that those who failed to do so would be exposed to the dangers of criminality and drug abuse. The envisaged reorganization of the primary education sector, 92 per cent of which, it should be remembered, consisted of rural schools, offered a certain amount of hope. At the other end of the scale, it was hoped that regional arrangements and the export market would provide improved employment opportunities for skilled manpower.

4. Replying to Mrs. Jiménez Butragueño, who had asked about the status and rights of married women, he said that a great deal had been achieved in that field, not least thanks to the activities of women's associations. A number

of discriminatory laws had been abolished. For instance, an article in the Penal Code relating to the abandonment of the conjugal home, which had previously applied only to women, had been repealed and replaced by a new article making it an offence for either spouse to leave the conjugal home without the consent of the other spouse. An article in the Family Code enabling the husband to stop his wife from exercising a profession had been repealed as a direct result of pressure by women's associations. Another article in the Family Code according to which a husband could prevent his wife from bearing his name after divorce had been replaced by a provision making it necessary for the husband to justify his objection. An article had been added to the Family Code confirming the possibility of opting for the "separation of property" regime in marriage. However, even where property was held in common, the wife could protest if the husband used the common property for a purpose such as, say, contracting a polygamous marriage.

5. In the past, the Family Code had allowed a husband to divorce his wife by repudiating her in the presence of witnesses. That provision, which was considered humiliating to the wife, had been abrogated in 1972. There were two ways of obtaining a divorce, by mutual consent or as a result of a defended suit. In the latter case, where it had previously been necessary to prove fault, the law now recognized as many as 10 causes of breakdown of the marriage, including that of incompatibility of character. As for the question of the dowry, a matter which had caused considerable concern to successive administrations because of the exorbitant amounts of money and valuables changing hands, an act promulgated in 1967 stipulated that a dowry paid for a girl could not exceed CFA francs 18,000 (the equivalent of less than US$ 100), the maximum dowry for a woman who had already been married being limited to the equivalent of less than US$ 25.

6. Mr. GRISSA asked which of the spouses, in case of divorce, kept the conjugal home. In a further question, he asked whether, in a case of divorce by mutual consent, the judge could refuse to grant the divorce if he found that it was not in the best interests of the child or children of the marriage.

7. Mr. FOFANA (Senegal) said that, divorce being a matter of public law, the judge had to verify the conditions of a divorce requested by mutual consent and, in particular, to satisfy himself that the wife's consent had not been obtained by force. The question of the conjugal home was generally settled between the divorcing spouses. The judge certainly had the power to refuse to grant a divorce if the proposed settlement was detrimental to the interests of the couple's children.

8. Mr. CEAUSU said that in Europe, a dowry used to have to be paid by the parents of the bride to the future husband. In Senegal, the reverse appeared to be the case. While noting that the payment of exorbitant bride money was now prohibited, he still felt that the practice as such was contrary to the human dignity of the woman.

9. Mr. FOFANA (Senegal) said that the custom in African countries was indeed different from that which had once prevailed in the countries of the Greco-Roman tradition. A certain sum of money or amount of property was

paid by the future husband to the parents of the bride. As already stated, the practice had got out of hand over the years, causing serious problems to the colonial administration. It should be remembered that 94 per cent of the population of Senegal were Muslims, and that the first question asked by the imam at the mosque when a couple came to be married was whether the dowry had been duly paid. A similar question was also asked at the registry office before the marriage certificate could be issued. The Act limiting the amounts of bride money represented an important step forward.

10. Mr. GRISSA said that, in Muslim communities, the marriage dowry belonged to the bride and was not paid to her parents. The fact that the dowry was usually a considerable sum was also a disincentive to divorce. In such circumstances, a dowry could in no way be regarded as a contract of sale.

11. Mr. FOFANA (Senegal) said that it was a feature of African culture that a marriage was not simply viewed as a partnership between individuals but assumed a family dimension. The dowry, delivered by the bridegroom's parents to those of the bride, was in the nature of a guarantee; it was certainly not a purchase payment. The reason for the legislation referred to was simply that dowry sums had tended to become exorbitant.

12. Mr. RATTRAY, referring to the difficulties mentioned regarding access to primary education and lack of resources for teacher training, noted that the main reason adduced was the restrictions imposed by the structural adjustment programme. He wondered what priority the Government accorded to education in that regard, and what measures were being taken to alleviate the problems - for example, whether any attempt had been made to persuade international lending agencies to moderate their terms in the light of educational and other social needs.

13. Mr. FOFANA (Senegal) said that an essential goal of any structural readjustment action was financial balance. Prior to the programme's entry into force, education had accounted for 33 per cent of the annual budget, which had since perforce been reduced to between 26 and 27 per cent. On account of the accompanying wage freeze, teacher recruitment and replacement had likewise fallen; the school building programme had been curtailed also. Attempts to tackle the problems included plans to divide the classroom day into two halves, each attended by a separate group. The problems in education were exacerbated by the growth in population.

14. Replying to a question by Mrs. JIMÉNEZ BUTRAGUEÑO on the last-mentioned point, he referred the Committee to section E of the report (E/1984/6/Add.22), relating to the Government's policy measures; as could be seen in subparagraph 163 (f), 32.6 per cent of women practised contraception, 6.3 per cent making use of modern methods. Access to family planning centres and the provision of contraceptives, were free of charge. Amendments had also been enacted to relax the Criminal Code's former provisions relating to contraception, although abortion was still an offence.

15. The CHAIRPERSON said that the Committee should be focusing on articles 6-9 of the Covenant rather than pursuing extraneous sociological aspects.

16. Mr. CEAUSU pointed out that the questions and comments raised referred to matters in the report currently before the Committee. With regard to the effect of the structural adjustment programme on educational needs, he asked in particular how many university-qualified teachers there were throughout Senegal's educational system.

17. Reference had been made to articles 238 and 244 of Senegal's Labour Code, relating to failure of arbitration. He would like to have details of those articles' provisions, and an idea of the circumstances in which arbitration might be deemed to have failed.

18. Mr. FOFANA (Senegal) said that teachers in Senegal must have a university diploma as well as a diploma from a recognized teacher training institute; graduates could not enter the teaching profession direct from university. Figures for the period 1990-91 showed that there were 13,394 teachers in primary education, 2,464 in secondary education and 601 in higher education.

19. With regard to settlement of labour disputes, local disputes were taken by the parties to the local authorities. Disputes wider in scope were referred to the Minister of Labour, who appointed a panel which heard the case and attempted to achieve conciliation. If that failed, or if the case involved technical considerations beyond the panel's competence, the parties were invited to agree upon the appointment of an arbitrator, who, having heard the case, would pronounce his findings, which were forwarded to the Minister. The parties, in agreeing to the appointment of an arbitrator, thereby agreed in principle to abide by his findings. There had been a recent instance, however, in which one party, the trade union concerned at the time, had disavowed the findings and called a strike; in those circumstances, the authorities had declared the strike illegal.

20. The CHAIRPERSON said that the Committee had completed its consideration of the initial report by Senegal in the presence of the delegation, and would issue its concluding observations towards the end of the current session. He thanked the Senegalese delegation for the report and for its cooperation with the Committee.

21. Mr. FOFANA (Senegal) thanked the Committee for the opportunity to discuss his country's initial report. He offered his Government's apologies for the delay in submitting it, and solemnly pledged that all necessary steps would be taken to avoid such delays in future. His delegation had greatly appreciated the opportunity to hear the views and comments of experts, all of which would be reported to the Government, which assured the Committee of its desire to achieve and maintain the standards expected of a State party.

22. Mr. Fofana and Mr. Ndiaye (Senegal) withdrew.

ORGANIZATION OF WORK (agenda item 2) (continued)

23. The CHAIRPERSON pointed out that the World Summit for Development was due to be held at Copenhagen in March 1995. It would be an occasion of major importance for the Committee. The secretariat's coordinator for the Summit

would be in Geneva next week and had been invited to address the Committee on Thursday morning. The Committee would have to discuss what contribution it could make to the Summit.

24. As usual, the Committee would have a day of general discussion at its next session and it might wish to focus on issues of importance for the Summit. Social safety nets, which were now being called into question, might be a key concern. The Committee could not ignore the challenge presented to the basic premises of the Covenant. It might be useful to have a full discussion of the matter with the participation of outside experts. There was a danger that the World Summit would not consider economic, social and cultural rights, and the Committee had a responsibility to draw attention to them.

25. Mr. GRISSA noted that, according to the press, social security costs and minimum wages were under attack in many places. A financial problem was arising because the proportion of the population accounted for by pensioners was increasing and the working population was declining. The Committee could not ignore the cost factor and should not criticize Governments that had no resources. Senegal, for instance, had a restructuring problem; it had to reduce costs and could not borrow because nobody wished to lend. Consequently, expenditure had to be cut back on everything. Some people might say that spending should be reduced on roads but not on education. However, every country had to set its own priorities. Even highly developed countries were reducing their social security expenditure. Everything had to be paid for somehow.

26. The CHAIRPERSON said that he disagreed with a number of points made by Mr. Grissa, since the Covenant was concerned with binding obligations to ensure the satisfaction of specific human rights. There was, however, no need to pursue the matter further at the moment.

27. Mr. TEXIER said that the discussion so far showed that the idea of holding a day-long debate on the subject at the next session was sound. In many countries the need to restructure the economy was leading to a curtailment of social rights. The establishment of regional economic blocs might well help to make the regions concerned more competitive, but the costs might have to be paid by the most vulnerable population groups of interest to the Committee, through the creation of two-speed societies. The topic was therefore very important and deserved to be the subject of a day of general discussion that could lead to the preparation of a general comment to be submitted to international bodies dealing with economic affairs and to be used for integrating economic, social and cultural rights in any international discussion or agreement on economic transformation. In that connection it would be important for the Committee to have the assistance of outside experts in economics.

28. The CHAIRPERSON recalled that at its previous session the Committee had requested the sum of US$ 10,000 to facilitate the participation of experts in its day of general discussion. Two western countries, which were members of the Security Council, had not been happy with that idea and a third country that was also a member of the Security Council had asked for the issue to be

deferred pending the submission of a more thorough explanation of why the money was needed. It would therefore be necessary to prepare a draft resolution or other text for that purpose.

29. It seemed to him that there were not many bodies in the world like the United Nations treaty monitoring bodies, which were unable to control a penny of public funding. For example, if the Committee decided to send its Chairperson the short distance to Nyon for consultations, it would need authorization from the Economic and Social Council, which it could take six months or more to obtain. Similarly, if the Committee wanted to have a paper prepared by an outside expert, it could not do so. In that respect the Committee differed from other bodies operating outside the human rights area.

30. Mr. ALVAREZ VITA asked the Chairperson to name the three countries to which he had referred.

31. The CHAIRPERSON repeated that the countries were western members of the Security Council, of which there were not that many. Their opposition had presumably been not so much to economic rights or to the Committee as to the principle that treaty bodies should have access to funds for spending without prior authorization, or possibly to treaty bodies' recourse to independent experts. Since the sum involved was so small, a draft resolution would presumably be sufficient to persuade the Economic and Social Council.

32. Mr. TEXIER said that he had been informed that the Committee's request was not sufficiently explained, that not enough reasons had been given.

33. The CHAIRPERSON confirmed that the request had not been turned down; the issue had merely been deferred pending the receipt of further information.

34. Mr. ALVAREZ VITA said that he did not wish to force the Chairperson's hand, but his question had not been answered.

35. The CHAIRPERSON said that he had probably given sufficient indication. He did not wish to signal to the countries concerned that the Committee considered that they were antagonistic to its cause.

36. Mr. SIMMA suggested that there should be no official meeting in the afternoon of that day so that members could have time to prepare properly for the day of general discussion on the right to health and to study the draft concluding observations already in circulation.

37. The CHAIRPERSON said that the Committee's next meeting would therefore be held on the following morning, when it would proceed to a paragraph-by-paragraph discussion of the draft concluding observations. He noted that the quality of the Committee's work would increasingly be judged by the quality of its concluding observations.

The meeting rose at 11.50 a.m.